

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XUEJIE HE,

Plaintiff,

-v.-

UNITED STATES OF AMERICA, *et al.*

Defendants.

23 Civ. 3214 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

On April 21, 2023, the Court dismissed without prejudice Plaintiff's complaint in this action, and directed Plaintiff to file an amended complaint by June 20, 2023. (Dkt. #4). In dismissing the complaint, the Court noted that (i) the vast majority of Plaintiff's claims were substantively identical to those brought in a prior action, and thus Plaintiff was precluded from relitigating those claims (*id.* at 2-4); (ii) the Court could not discern the basis of its jurisdiction over the claims or parties (*id.* at 5); (iii) the complaint was so ill-pleaded and confusing that it failed to comply with Federal Rule of Civil Procedure 8 (*id.*); (iv) a variety of Plaintiff's claims appeared time-barred (*id.* at 5-6); and (v) Plaintiff failed to sufficiently differentiate among Defendants and requested relief (*id.*).

The Court gave Plaintiff clear instructions on how to proceed, including by granting Plaintiff leave to replead claims that were not brought or could not have been brought in the New Jersey Case. (Dkt. #4 at 6).¹ Rather than take

¹ This Order incorporates by reference the naming conventions in the April 21, 2023 Order.

the 60 days the Court provided to fix these fatal issues, Plaintiff submitted the Amended Complaint within a week of the Court's dismissal order. (Dkt. #5). The Court has now reviewed the Amended Complaint in detail, and finds that dismissal is warranted for the same reasons discussed in its April 21, 2023 Order. The Amended Complaint is substantively identical to the prior complaint in this action, save for a few confusing allegations added to precluded claims, and additional claims related to alleged conduct from April 20, 2023. In other words, the Amended Complaint does nothing to redress the issues the Court discussed in its April 21, 2023 Order.

The Court was clear that it would "dismiss an amended complaint if Plaintiff fails to comply with this Order, and decides to continue claims that were already brought in the New Jersey Case or could have been brought in that case." (Dkt. #4 at 6). Yet, Plaintiff has submitted a near mirror-image Amended Complaint, and has entirely failed to comply with the Court's Order that Plaintiff discontinue entirely non-viable claims. "[W]here 'the Court has put [a] [p]laintiff on notice of the deficiencies in [her] original complaint and given [her] an opportunity to correct these deficiencies in an [a]mended [c]omplaint, but [p]laintiff has failed to do so, dismissal with prejudice is appropriate.'" *Cook v. Dewitt*, No. 19 Civ. 2780 (NSR), 2022 WL 580774, at *4 (S.D.N.Y. Feb. 25, 2022) (quoting *Coon v. Benson*, No. 09 Civ. 230 (SCR) (LMS), 2010 WL 769226, at *4 (S.D.N.Y. Mar. 8, 2010)).

Accordingly, the Court DISMISSES WITH PREJUDICE Plaintiff's Amended Complaint. The Clerk of Court is directed to terminate all pending motions, adjourn all remaining dates, and close this case.

SO ORDERED.

Dated: April 28, 2023
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

KATHERINE POLK FAILLA
United States District Judge